

**THE UNITED STATE DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No 4:11-CV-00176-BO**

MARK HENDRIKS, Individually And On  
Behalf Of All Others Similarly Situated,

Plaintiff,

v.

PHARMACEUTICAL PRODUCT  
DEVELOPMENT, INC., *et al.*,

Defendants.

**DEFENDANTS' MOTION  
REQUESTING  
RECONSIDERATION OF ORDER  
EXPEDITING DISCOVERY AND  
SETTING PRELIMINARY  
INJUNCTION HEARING**

All defendants, pursuant to Rule 7(b) of the Federal Rules of Civil Procedure, respectfully move the Court to reconsider the Order entered earlier today granting Plaintiff's motion for expedited discovery and setting a preliminary injunction hearing for November 15<sup>th</sup>. Defendants make this request because Plaintiff, in seeking expedited discovery and a hearing on the preliminary injunction motion, did not inform the Court of the following material considerations, all of which weigh heavily in favor of reconsideration of the Order:

1. Five Virtually Identical Actions Are Pending In State Court.

All of the issues raised by Plaintiff in this action were already before the North Carolina state courts *before* Plaintiff filed this action. The issues are presented in each of the following five pending cases, two of which were filed *before* this action:

- *Coyne v. Pharmaceutical Product Development, Inc.*, No. 11-CvS-4186 (New Hanover) (filed Oct. 5, 2011)
- *The Edward J. Goodman Life Income Trust v. Eshelman*, No. 11-CvS-4252 (New Hanover) (filed Oct. 10, 2011)
- *York County Employees Retirement Board v. Pharmaceutical Product Development, Inc.*, No. 11-CvS-4333 (New Hanover) (filed Oct. 17, 2011)
- *Litwin v. Eshelman*, No. 11-CvS-4333 (New Hanover) (filed Oct. 17, 2011)

- *Neiditch v. Pharmaceutical Product Development, Inc.*, No. 11-CvS-4334 (New Hanover) (filed Oct. 17, 2011)

Each of these cases has been designated to the North Carolina Business Court and will be handled (collectively) by the Honorable James L. Gale. Defendants have requested that Judge Gale set a conference to coordinate these five pending actions to allow for an efficient approach to any discovery and motion practice.

2. Plaintiff Did Not Inform The Court That Defendants Were Opposed To Expedited Discovery.

This afternoon, Defendants filed pleadings opposing Plaintiff's motion to expedite on multiple grounds, and seeking a stay of this action, in deference to the state actions. Plaintiff knew before he filed his motion that the defendants planned to oppose expedited proceedings and intended to seek a stay. Plaintiff did not inform the Court of the defendants' opposition or of the forthcoming motion for a stay, however. Indeed, Plaintiff filed the motion to expedite before even serving some of the defendants in this action. Plaintiff should have informed the Court that Defendants had indicated an intention to oppose the motion so to allow the Court an opportunity to consider the defendants' arguments before deciding Plaintiff's motion.

3. The PSLRA Contains An Automatic And Mandatory Discovery Stay.

Discovery in this case is automatically stayed pursuant to the Private Securities Litigation Reform Act of 1995, Pub. L. 104-67, 109 Stat. 737 ("PSLRA") for the reasons set forth in the briefs filed by Defendants this afternoon. Plaintiff did not properly inform the Court of the automatic stay imposed by the PSLRA, devoting only a couple sentences in a single footnote to suggest why the Court should reject the Congressional mandate.

In conclusion, Defendants respectfully request that the Court vacate its Order, reconsider Plaintiff's motion in light of the arguments submitted in opposition, and consider Defendants'

motion to stay proceedings (after allowing Plaintiff an opportunity to respond thereto). *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 12 (1983) (stating "every order short of a final decree is subject to reopening at the discretion of the district judge"); *DIRECTV, INC. v. Hart*, 366 F. Supp. 2d 315, 317 (E.D.N.C. 2004) (discussing a federal district court's ability to rule on motions to reconsider generally).

Respectfully submitted,

Dated: October 21, 2011

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing pleading was filed with the Clerk of the United States District Court for the Eastern District of North Carolina using the CM/ECF system which will send notification of this filing and an electronic copy of same to the following (all counsel of record in the CM/ECF system):

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